IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2008

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.A.Nos.247 and 248 of 2000, 1124 and 1125 of 2001
and W.P.No.18909 of 1996

W.A.No.247 of 2000:

1.K.K.Mohandas
2.Dr.V.K.Madanmohan
3.S.Hemalatha
4.T.K.Gokulpalan
5.N.N.Pushkaran
6.T.V.Pushpangathan
7.I.G.Bhymi Suresh
8.I.G.Rajendra Prasad
9.K.K.Madhavi
10.T.R.Venugopalan
11.V.K.Yamuna Raghavan
12.Pushpa Sasidaran
13.P.R.Palpu
14.K.S.Chathunny & Co..
Managing Partner
K.K.Mohandas. ... Appellants

W.A.No.248 of 2000:

1.K.K.Mohandas
2.Dr.V.K.Madanmohan
3.S.Hemalatha
4.T.K.Gokulpalan
5.N.N.Pushkaran
6.T.V.Pushpangathan
7.I.G.Bhymi Suresh
8.I.G.Rajendra Prasad
9.K.K.Madhavi
10.T.R.Venugopalan
11.V.K.Yamuna Raghavan
12.Pushpa Sasidaran
13.P.R.Palpu

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14.K.S.Chathunny & Co..
Managing Partner
K.K.Mohandas. ... Appellants

Versus

1.State of Tamil Nadu
represented by Secretary to Government
Prohibition and Excise Department
Fort St.George
Clhennai - 600 009

2.Excise Officer
North and South
Coimbatore

3.The District Collector
Coimbatore

4.The District collector
Thrissour

5.Tahsildar (Revenue Recovery)
Thrissour. ... Respondents in both W.As

W.A.Nos.1124 and 1125 of 2001:

K.M.Sankaran ... Appellant

Versus

1.State of Tamil Nadu
represented by Secretary to Government
Prohibition and Excise Department
Fort St.George
Chennai - 600 009

2.The District Collector
Coimbatore

3.Excise Officer
North and South
Coimbatore ... Respondents

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

W.P.No.18909 of 1996:

T.V.Sarangadharan ... Petitioner

Versus

1.State of Tamilnadu represented by
Secretary to Government
Prohibition & Excise Department
Fort St.George, Madras - 600 009

2.The Collector of Chennai
Collectorate, Ezhilagam,
Chepauk, Chennai - 600 005

3.The Deputy Tahsildar
Revenue Recovery
Mukundapuram Taluk Office
Irinjalkuda
Kerala State. ... Respondents

Prayer: W.A.Nos.247 and 248 of 2000 and W.A.Nos.1124 and 1125 of 2001 are filed under Clause 15 of the Letters Patent against the order of the learned single Judge of this Court dated 17.4.2000 made in W.P.Nos.6177 and 6178 of 1993 and W.P.Nos.3933 and 3934 of 1992.

W.P.No.18909 of 1996 is filed under Article 226 of the Constitution of India for the issue of a writ of mandamus forbearing the respondents from in any manner resorting to recover any dues from the petitioner as arrears of land revenue in respect of the lease of Arrack Shop A.S.No.5/81-82 and A.S.No.17/81-82 of Madras District during the excise year 1981-82 by declaring such proceedings to the unconstitutional, void and unenforceable.

For Appellants: Mr.Satish Parasaran
in all the W.As
and petitioner
in W.P
For Respondents: Mr.Edwin Prabhakaran,G.A.
in both W.As and
W.P.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)

The Writ Appeals in W.A.Nos.1124 and 1125 of 2001 are arising out of the order dated 17.4.2000 made in W.P.Nos.3933 and 3934 of 1992. The relief sought for in W.P.No.3933 of 1992 was for issuance of a mandamus forbearing the respondents from in any manner resorting to recover any dues from the petitioner as arrears of land revenue in respect of toddy and arrack shops licenced to Ms.K.S.Chathumni & Co., during the excise year 1981-82. The relief sought for in W.P.No.3934 of 1992 was for issuance of writ of declaration declaring that the provisions of Rule 21 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Action) Rules, 1981 is unconstitutional, void and unenforceable.

2. The Writ Appeals in W.A.Nos.247 and 248 of 2002 are arising out of the order dated 17.4.2000 made in W.P.Nos.6177 and 6178 of 1993. The relief sought for in W.P.No.6177 of 1993 was for issuance of a mandamus forbearing the respondents from in any manner resorting to recover any dues from the petitioner as arrears of land revenue in respect of toddy and arrack shops licenced to Ms.K.S.Chathumni & Co., during the excise year 1981-82. The relief sought for in W.P.No.6178 of 1993 was for issuance of writ of declaration declaring that the provisions of Rule 21 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Action) Rules, 1981 is unconstitutional, void and unenforceable.

3. The learned single Judge dismissed the writ petitions taking note of the fact that the appellants have filed a civil suit on the file of this Court against the claim of notional loss and therefore the appellants could not invoke the extraordinary equitable remedy under Article 226 of the Constitution of India and the relief sought for was pre-mature and could not be granted, particularly when the civil suits were pending. The correctness of the same is now put in issue in these appeals.

4. A connected writ petition in W.P.No.18909 of 1996, which is filed seeking for the relief of issuance of a writ of mandamus forbearing the respondents from in any manner resorting to recover any dues from the petitioner as arrears of land revenue in respect of the lease of Arrack Shop A.S.No.5/81-82 and A.S.No.17/81-82 of Madras District during the excise year 1981-82 by declaring such proceedings as unconstitutional, void and unenforceable, is directed to be tagged along with the above appeals.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. We heard the argument of the learned counsel on either side and perused the materials on record.

6. The appellant was a partnership firm consisting of several partners and obtained a privilege of selling arrack for as many as 11 arrack shops and two toddy shops during the Excise year 1981-82. According to the respondent, after obtaining privilege of vending arrack and toddy from the Government, the appellants/writ petitioner committed default and violated the provisions of the Tamil Nadu Toddy and Arrack Shops (Disposal in Action) Rules, 1981 and thereupon surrendered licence, which compelled the respondent Government to bring those shops for re-auction. In that process, the respondent Government sustained loss in a sum of Rs.39,44,847/- in respect of arrack shops and a sum of Rs.4,04,965/- in respect of toddy shop. Rule 21 of Tamil Nadu Toddy and Arrack Shops (Disposal in Action) Rules, 1981 empowers the respondent to recover notional loss sustained by it from the licensee or person, who is responsible for the loss. The respondent sought to recover the loss by invoking the said provision. After the surrender of the shops, the appellant filed Civil Suit before this Court not only against the demand, but also claiming damages. As against the judgment in that Civil Suit, an appeal was filed and a further appeal is now pending before the Supreme Court. The Supreme Court heard the matter and orders are yet to be passed. This is precisely the facts of the case.

7. Rule 21 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Action) Rules, 1981 reads as follows:

> "Rule 21. Resale of Shop. --
>
> (1) On the failure of any person to make a deposit or apply for a licence, or to comply with any requisition or to execute any bond, deed or agreement under these rules the shop may be resold under the orders of the Collector or, on a report from the Assistant Commissioner, the Sale Officer, the Collector may otherwise dispose of the shop. Resales under this rule shall be at the risk of the defaulting bidder, who shall forfeit all gain, if any, that may secure by the resale and in the event of a loss by resale, the defaulting bidder shall be required to make good the deficiency between the total amount payable for the whole period under the terms of the original sale and by the total amount payable by the successful bidder at the resale. In the latter case, the deposits already made by defaulting bidder, excluding the amount of earnest money deposit, if any, forfeited to the State Government under rule 15 shall be forfeited and deducted from the loss arising from the resale, and the balance of the loss, if any, shall be recoverable in the same manner as if it

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

were an arrear of land revenue. Should, however, the deposits be greater than the loss by resale, only such part of the deposits as is necessary to cover loss by resale shall be forfeited and the balance refunded to the defaulter. The defaulting bidder shall be similarly liable if the shop is disposed of otherwise than by resale and such disposal results in loss to the State Government as compared with the original sale.

Explanation. -- For the purpose of this rule, Disposal otherwise than by resale includes closure.

(2) Where the successful bidder discontinues the privilege during the period for which it was granted or his privilege is cancelled, the shop shall be resold for the remainder of the period and the provisions of sub-rule (1) shall apply mutatis mutandis to such resale."

8. The challenge to the above provision, in our view, at this point of time, cannot detain us any further. The Constitution Bench of the Supreme Court in the case of HAR SHANKAR AND OTHRS VS. THE DEPUTY EXCISE AND TAXATION COMMISSIONER AND OTHERS reported in (1975) 1 SCC 737, has considered the similar provision i.e., Section 60(1) of Punjab Excise Act, 1914, which provided that "all excise revenue", any loss that may accrue by reason of the re-sale of a grant and all amounts due to the Government on account of any such contract relating to the excise revenue may be recovered by any process for the recovery of arrears of land revenue and held as valid. Hence, the relief of declaration sought for in W.P.Nos.3934 of 1992 and 6178 of 1993 declaring the provisions of Rule 21 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Action) Rules, 1981 is unconstitutional, void and unenforceable, cannot be legally sustainable and liable to be rejected.

9. When the relief of declaration of Rule 21 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Action) Rules, 1981 as unconstitutional has thus been rejected, the relief of mandamus restraining the respondents from recovering the dues as arrears of land revenue cannot be granted as it otherwise amount to restraining the statutory authorities from performing their statutory duty.

10. Learned counsel for the appellants as well as the learned counsel appearing for the respondents have submitted that as against the Civil Suit filed by the appellants, one against the recovery proceedings and the other claiming damages from the respondent Government, the issue is now seized of by the Supreme Court in Civil Appeal No.5125 of 2001 and the same was heard and orders are to be delivered. Learned counsel for the appellants submitted that in the above circumstances of the case, the recovery proceedings may be directed to be kept in abeyance till the verdict is rendered by the Honourable Apex Court.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. Having regard to the fact that the appellant had succeeded before this Court in respect of damages sought for from the respondent Government and the appeal questioning the correctness of the same has been heard by the Apex Court and orders are to be delivered and having regard to the further fact that the matter has been under litigation for more than a decade, we are of the view that interest of justice would be met if the respondents are directed to keep in abeyance the recovery proceedings till orders are passed by the Supreme Court.

11. Hence, we direct the respondents to keep in abeyance the recovery proceedings till orders are passed by the Supreme Court.

With this observation, the writ appeals and writ petition are dismissed. However, there is no order as to costs.

ksv/usk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamil Nadu
Fort St.George
Clhennai - 600 009

2.The Excise Officer
North and South
Coimbatore

3.The District Collector
Coimbatore

4.The District collector
Thrissour

5.Tahsildar (Revenue Recovery)
Thrissour.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6.The Collector of Chennai
Collectorate, Ezhilagam,
Chepauk, Chennai - 600 005

7.The Deputy Tahsildar
Revenue Recovery
Mukundapuram Taluk Office
Irinjalkuda
Kerala State.

KSJ(CO)
dcp/26.2

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/